

HOUSE BILL 1090

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P2

1999 Regular Session  
9lr0224  
CF 9lr0227

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By: **The Speaker (Administration)**

Introduced and read first time: February 22, 1999

Assigned to: Rules and Executive Nominations

Re-referred to: Commerce and Government Matters, February 26, 1999

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Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 23, 1999

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CHAPTER \_\_\_\_\_

1 AN ACT concerning

2 **Procurement Practices Improvement Act of 1999**

3 FOR the purpose of requiring procurement officers to maintain certain records and  
4 document certain information; authorizing procurement officers to disclose only  
5 specified information; defining certain terms; authorizing the Attorney General  
6 to institute proceedings to debar certain persons under certain circumstances;  
7 altering certain definitions; prohibiting certain persons from accepting certain  
8 gifts; and generally relating to public ethics and procurement.

9 BY adding to

10 Article - State Finance and Procurement  
11 Section 13-202  
12 Annotated Code of Maryland  
13 (1995 Replacement Volume and 1998 Supplement)

14 BY repealing and reenacting, with amendments,

15 Article - State Finance and Procurement  
16 Section 13-211, 16-303, and 16-304  
17 Annotated Code of Maryland  
18 (1995 Replacement Volume and 1998 Supplement)

19 BY repealing and reenacting, with amendments,

20 Article - State Government  
21 Section 15-102(n), 15-501, and 15-502  
22 Annotated Code of Maryland

1 (1995 Replacement Volume and 1998 Supplement)

2 BY adding to

3 Article - State Government

4 Section 15-505(d-1)

5 Annotated Code of Maryland

6 (1995 Replacement Volume and 1998 Supplement)

7 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
8 MARYLAND, That the Laws of Maryland read as follows:

9 **Article - State Finance and Procurement**

10 13-202.

11 (A) ~~DURING THE PROCUREMENT PROCESS AFTER A SOLICITATION IS ISSUED~~  
12 ~~AND UNTIL A FINAL CONTRACT IS AWARDED RECOMMENDATION IS MADE BY A~~  
13 ~~PROCUREMENT OFFICER, A PROCUREMENT OFFICER MAY DISCLOSE TO A PERSON~~  
14 ~~OUTSIDE THE EXECUTIVE DEPARTMENT ONLY:~~

15 (1) WHETHER A DECISION HAS BEEN MADE REGARDING A  
16 SOLICITATION; AND

17 (2) INFORMATION THAT IS AVAILABLE TO THE PUBLIC UNDER §§ 10-611  
18 THROUGH 10-628 OF THE STATE GOVERNMENT ARTICLE.

19 (B) AFTER A SOLICITATION IS ISSUED, A PROCUREMENT OFFICER SHALL  
20 RECORD AND INCLUDE IN THE PROCUREMENT FILE THE FOLLOWING INFORMATION  
21 FROM AN INQUIRY FROM A SOURCE OUTSIDE THE AGENCY OR UNIT UNDERTAKING  
22 THE PROCUREMENT EXECUTIVE DEPARTMENT:

23 (1) THE DATE AND TIME OF THE INQUIRY;

24 (2) THE NAME AND AFFILIATION OF THE PERSON MAKING THE INQUIRY;  
25 AND

26 (3) THE SUBSTANCE AND NATURE OF THE INQUIRY.

27 (C) A PROCUREMENT OFFICER SHALL MAINTAIN A FILE ON EACH  
28 PROCUREMENT THAT INCLUDES:

29 (1) A RECORD OF ALL INQUIRIES ~~FROM SOURCES OUTSIDE THE AGENCY~~  
30 ~~OR UNIT UNDERTAKING THE PROCUREMENT~~ REQUIRED TO BE RECORDED UNDER  
31 SUBSECTION (B) OF THIS SECTION;

32 (2) ALL WRITTEN SOLICITATIONS BY AN AGENCY OR UNIT;

33 (3) ALL OFFERS RECEIVED;

1 (4) ALL INTERNAL AND EXTERNAL CORRESPONDENCE ~~AND~~  
2 ~~COMMUNICATIONS~~ REGARDING THE PROCUREMENT;

3 (5) WRITTEN DOCUMENTATION FROM THE PROCUREMENT OFFICER  
4 DESCRIBING EFFORTS TO CONFIRM THE INFORMATION IN THE AFFIDAVITS  
5 SUBMITTED BY THE SUCCESSFUL BIDDER OR OFFEROR; AND

6 (6) THE FINAL CONTRACT.

7 13-211.

8 (A) IN THIS SECTION, "PROCUREMENT OFFICIAL" MEANS A PROCUREMENT  
9 OFFICER OR AN INDIVIDUAL WHO PARTICIPATES IN THE DRAFTING OF  
10 SPECIFICATIONS FOR PROCUREMENT.

11 (B) During the conduct of a procurement, a competing contractor, or any  
12 officer, employee, representative, agent, or consultant of any competing contractor,  
13 may not knowingly:

14 (1) make any offer or promise of future employment or business  
15 opportunity to, or engage in any discussion of future employment or business  
16 opportunity with, any procurement official of the agency conducting the procurement;

17 (2) offer, give, or promise to offer or give any money, gratuity, or other  
18 thing of value to any procurement official of the agency conducting the procurement;  
19 or

20 (3) solicit or obtain from any officer or employee of an agency conducting  
21 the procurement, before the award of a contract, any proprietary or source selection  
22 information regarding the procurement.

23 16-303.

24 (a) [Except for failure to perform or unsatisfactory performance under §  
25 16-203(c) of this title, the Attorney General shall report to the Board information that  
26 indicates a basis may exist for instituting debarment proceedings under § 16-202 or §  
27 16-203 of this title] THE ATTORNEY GENERAL MAY INSTITUTE PROCEEDINGS TO  
28 DEBAR A PERSON UNDER § 16-202(B) OR § 16-203 OF THIS TITLE FROM:

29 (1) BEING CONSIDERED FOR THE AWARD OF, BEING AWARDED, OR  
30 PERFORMING A CONTRACT WITH A PUBLIC BODY IF ~~THE PERSON IS DEBARRED~~ THE  
31 ATTORNEY GENERAL BELIEVES THAT THE PERSON IS SUBJECT TO DEBARMENT  
32 UNDER § 16-202(B) OF THIS TITLE; OR

33 (2) BEING CONSIDERED FOR THE AWARD OF, BEING AWARDED, OR  
34 PERFORMING A CONTRACT WITH A PUBLIC BODY THE STATE IF ~~THE PERSON IS~~  
35 ~~DEBARRED~~ THE ATTORNEY GENERAL BELIEVES THAT THE PERSON IS SUBJECT TO  
36 DEBARMENT UNDER § 16-203 OF THIS TITLE.

37 (b) The Attorney General may recommend whether the Board should[:

1 (1) institute debarment proceedings under § 16-304(b) of this subtitle;  
2 and

3 (2)] suspend a person under § 16-305 of this subtitle.

4 (c) The Attorney General:

5 (1) shall investigate the matters to be determined by the Board in a  
6 hearing under this title;

7 (2) as a party to any proceeding brought under this title, shall present to  
8 the Board the evidence that the Attorney General considers appropriate; and

9 (3) may recommend:

10 (i) whether the Board should debar the person; and

11 (ii) the appropriate time period of the debarment.

12 (d) (1) If the Attorney General reasonably believes that a person may have  
13 information or may be in possession, custody, or control of any original or copy of any  
14 book, record, report, memorandum, paper communication, tabulation, map, chart,  
15 photograph, mechanical transcription, or other tangible document or recording,  
16 wherever situated, which the Attorney General believes is relevant to, or may lead to  
17 the discovery of, evidence relevant to the subject matter of an investigation of a  
18 possible basis for debarment under this title, the Attorney General, before [making  
19 any recommendation] INITIATING DEBARMENT PROCEEDINGS OR RECOMMENDING  
20 SUSPENSION AS provided for in this title, may serve on the person a written  
21 investigative demand which requires the person to perform any one or more of the  
22 following:

23 (i) to be examined under oath;

24 (ii) to answer written interrogatories; or

25 (iii) to produce documentary material and permit inspection and  
26 copying of such material.

27 (2) The demand of the Attorney General shall:

28 (i) state the grounds for debarment under investigation;

29 (ii) describe the class of documentary material to be produced  
30 under the demand with sufficient specificity to indicate fairly the material demanded;

31 (iii) contain a copy of the written interrogatories;

32 (iv) prescribe a reasonable time of not less than 3 days after the  
33 demand is served at which time the person must appear to testify, within which time  
34 the person must answer the written interrogatories, and within which time the  
35 documentary materials must be produced;

1 (v) specify the place for the taking of testimony and for the  
2 production of documentary materials; and

3 (vi) identify the member of the Office of the Attorney General who  
4 will:

- 5 1. take testimony;
- 6 2. receive the answers to the written interrogatories; and
- 7 3. review the documentary material to be made available for  
8 inspection and copying.

9 (3) A petition to extend the time for compliance or to modify or set aside  
10 a demand issued under this subsection may be filed at any time before the date  
11 specified in the demand in the circuit court of the county of the petitioner's residence  
12 or principal place of business.

13 16-304.

14 (a) The Board shall notify a person that the person is debarred under §  
15 16-202(a) of this title, and shall give reasonable opportunity for that person to be  
16 heard on whether the stated basis for debarment exists.

17 (b) (1) The [Board] ATTORNEY GENERAL may institute proceedings to  
18 debar a person under § 16-202(b) or § 16-203 of this title BY FILING AN  
19 ADMINISTRATIVE COMPLAINT WITH THE BOARD [from:

20 (1) being considered for the award of, being awarded, or performing a  
21 contract with a public body, if the person is debarred under § 16-202(b) of this title; or

22 (2) being considered for the award of, being awarded, or performing a  
23 contract with the State, if the person is debarred under § 16-203 of this title].

24 (2) THE BOARD SHALL NOTIFY THE PERSON THAT DEBARMENT  
25 PROCEEDINGS HAVE BEEN INITIATED AND THAT THE PERSON HAS A RIGHT TO A  
26 HEARING.

27 (c) Before being debarred, a person subject to debarment under § 16-202(b) or  
28 § 16-203 of this title is entitled to a hearing before the Board. The Board shall  
29 conduct the hearing in accordance with Title 10, Subtitle 2 of the State Government  
30 Article.

31 (d) When a unit contracting for a public body is notified that a person who has  
32 applied for a contract is subject to debarment under this title, the unit shall notify the  
33 person in writing that:

34 (1) the application may be disqualified; and

35 (2) the person has a right to a hearing before the Board.

1 (e) Unless a person notified by the Board pursuant to this section submits a  
2 request to the Board for a hearing within 30 days after receiving such notice, the  
3 person:

4 (1) waives the right to a hearing; and

5 (2) is debarred.

6 **Article - State Government**

7 15-102.

8 (n) "Financial interest" means:

9 (1) ownership of an interest as the result of which the owner has  
10 received within the past 3 years, is currently receiving, or in the future is entitled to  
11 receive, more than \$1,000 per year; or

12 (2) (i) ownership of more than 3% of a business entity BY:

13 1. AN OFFICIAL;

14 2. AN EMPLOYEE; OR

15 3. THE SPOUSE OF AN OFFICIAL OR EMPLOYEE; or

16 (ii) ownership of securities of any kind that represent, or are  
17 convertible into, ownership of more than 3% of a business entity BY:

18 1. AN OFFICIAL;

19 2. AN EMPLOYEE; OR

20 3. THE SPOUSE OF AN OFFICIAL OR EMPLOYEE.

21 15-501.

22 (a) Except as otherwise provided in subsection (c) of this section, an official or  
23 employee may not participate in a matter if:

24 (1) the official or employee or a qualifying relative of the official or  
25 employee has an interest in the matter and the official or employee knows of the  
26 interest; or

27 (2) any of the following is a party to the matter:

28 (i) a business entity in which the official or employee has a direct  
29 financial interest of which the official or employee reasonably may be expected to  
30 know;

1 (ii) a business entity, including a limited liability company or a  
2 limited liability partnership, of which any of the following is an officer, director,  
3 trustee, partner, or employee:

- 4 1. the official or employee; or
- 5 2. if known to the official or employee, a qualifying relative of  
6 the official or employee;

7 (iii) a business entity with which any of the following HAS APPLIED  
8 FOR A POSITION, is negotiating EMPLOYMENT, or has arranged prospective  
9 employment:

- 10 1. the official or employee; or
- 11 2. if known to the official or employee, a qualifying relative of  
12 the official or employee;

13 (iv) if the contract reasonably could be expected to result in a  
14 conflict between the private interest and the official State duties of the official or  
15 employee, a business entity that is a party to a contract with:

- 16 1. the official or employee; or
- 17 2. if known to the official or employee, a qualifying relative of  
18 the official or employee;

19 (v) a business entity, either engaged in a transaction with the State  
20 or subject to regulation by the official's or employee's governmental unit, in which a  
21 direct financial interest is owned by another business entity if the official or  
22 employee:

- 23 1. has a direct financial interest in the other business entity;  
24 and
- 25 2. reasonably may be expected to know of both financial  
26 interests; or

27 (vi) a business entity that:

- 28 1. the official or employee knows is a creditor or obligee of  
29 the official or employee, or of a qualifying relative of the official or employee, with  
30 respect to a thing of economic value; and
- 31 2. as a creditor or obligee, is in a position to affect directly  
32 and substantially the interest of the official, employee, or qualifying relative.

33 (b) (1) The prohibitions of subsection (a) of this section do not apply if  
34 participation is allowed:

1 (i) as to officials and employees subject to the authority of the  
2 Ethics Commission, by regulation of the Ethics Commission;

3 (ii) by the opinion of an advisory body; or

4 (iii) by another provision of this subtitle.

5 (2) This section does not prohibit participation by an official or employee  
6 that is limited to the exercise of an administrative or ministerial duty that does not  
7 affect the disposition or decision with respect to the matter involved.

8 (c) An official or employee who otherwise would be disqualified from  
9 participation under subsection (a) of this section shall disclose the nature and  
10 circumstances of the conflict, and may participate or act, if:

11 (1) the disqualification would leave a body with less than a quorum  
12 capable of acting;

13 (2) the disqualified official or employee is required by law to act; or

14 (3) the disqualified official or employee is the only individual authorized  
15 to act.

16 15-502.

17 (a) This section does not apply to members of the General Assembly.

18 (b) Except as provided in subsections (c) and (d) of this section, an official or  
19 employee may not:

20 (1) be employed by or have a financial interest in:

21 (i) an entity subject to the authority of that official or employee or  
22 of the governmental unit with which the official or employee is affiliated; or

23 (ii) an entity that is negotiating or has entered a contract with that  
24 governmental unit OR AN ENTITY THAT IS A SUBCONTRACTOR ON A CONTRACT WITH  
25 THAT GOVERNMENTAL UNIT; or

26 (2) hold any other employment relationship if that employment  
27 relationship would impair the impartiality and independent judgment of the official  
28 or employee.

29 (c) The prohibitions of subsection (b) of this section do not apply:

30 (1) to employment or a financial interest allowed by regulation of the  
31 Ethics Commission if:

32 (i) the employment does not create a conflict of interest or the  
33 appearance of a conflict of interest; or



1 (ii) the financial interest is disclosed;

2 (2) to a public official who is appointed to a regulatory or licensing unit  
3 pursuant to a statutory requirement that entities subject to the jurisdiction of the  
4 unit be represented in appointments to it;

5 (3) as allowed by regulations adopted by the Commission, to an employee  
6 whose government duties are ministerial, if the private employment or financial  
7 interest does not create a conflict of interest or the appearance of a conflict of interest;  
8 or

9 (4) to a member of a board who holds the employment or financial  
10 interest when appointed if the employment or financial interest is publicly disclosed  
11 to the appointing authority, the Ethics Commission, and, if applicable, the Senate of  
12 Maryland before Senate confirmation.

13 (d) (1) Subject to paragraph (2) of this subsection, the Ethics Commission  
14 may exempt a public official of an executive unit or an employee of an executive unit  
15 from the prohibitions of subsection (b) of this section if the Ethics Commission  
16 determines that:

17 (i) failure to grant the exemption would limit the ability of the  
18 State to:

19 1. recruit and hire highly qualified or uniquely qualified  
20 professionals for public service; or

21 2. assure the availability of competent services to the public;  
22 and

23 (ii) the number of exemptions granted under this subsection has  
24 not tended to erode the purposes of subsection (b) of this section or other provisions of  
25 this title.

26 (2) (i) The Ethics Commission may grant an exemption under  
27 paragraph (1) of this subsection only:

28 1. in extraordinary situations; and

29 2. upon the recommendation of the Governor, at the request  
30 of the executive unit involved.

31 (ii) The Ethics Commission shall apply this subsection as  
32 consistently as possible under similar facts and circumstances.

33 15-505.

34 (D-1) AN OFFICIAL OR EMPLOYEE MAY NOT ACCEPT A GIFT THAT IS  
35 PROHIBITED UNDER § 13-211 OF THE STATE FINANCE AND PROCUREMENT ARTICLE.

1 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take  
2 effect October 1, 1999.